

STATE OF MICHIGAN

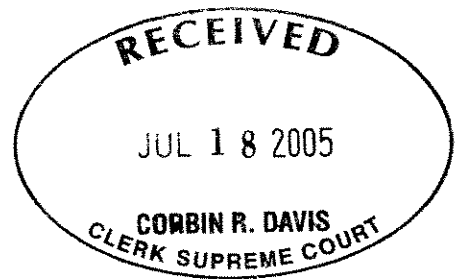


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July 15, 2005

Supreme Court Clerk  
Michigan Supreme Court  
PO Box 30052  
Lansing, Michigan 48909

RE: ADM File No. 2004-42  
Proposed Amendment of Rules 8.103, 8.107 and 8.110

To Whom It May Concern:

I have read the proposed amendment to MCR 8.103(4). I am extremely concerned with the unintended impact that the proposed rule as presently drafted might have on the administration of justice in this State.

First, the proposed amendment refers to the "caseload management standards articulated in Administrative Order No. 2003.7". That Administrative Order expressly establishes guidelines, not standards. In fact, I participated as a member of the advisory committee which assisted the Supreme Court in establishing such guidelines. It was never my understanding that the guidelines were intended to be absolute mandates, as one would infer from the use of the word standards. Rather, it was my understanding that the guidelines were created to assist the trial courts in caseload management by giving them some general parameters which the court could consider in determining how to manage their dockets effectively.

Next, the guidelines have been in force only approximately 18 months. To the best of my knowledge, the efficacy of the guidelines as adopted has never been examined. It seems to me that it would be wise for the Supreme Court instead of amending MCR 8.103(4) to first reconvene a committee to determine whether or not the guidelines have been realistic in their application and whether or not said guidelines should be modified.

I am also deeply concerned with the language of the proposed amendment requiring

the State Court Administrator to file a request for investigation with the Judicial Tenure Commission against a judge "who consistently fails to comply with the case management standards". My primary concern is the impact that this will have on the practice of law. In a rural community such as the county in which I preside, there are relatively few attorneys, and they frequently practice in a multitude of jurisdictions. Furthermore, the attorneys frequently have to be in two and three different courts at the same time, frequently in different counties at the same time. Consequently, as a practical matter it is often impossible to go forward with a case on the schedule suggested by the caseload management guidelines. This applies to the domestic relations cases over which I preside in Family Court, and even more so does it apply to child abuse and neglect cases in which we often have four and five attorneys representing a multitude of interested parties.

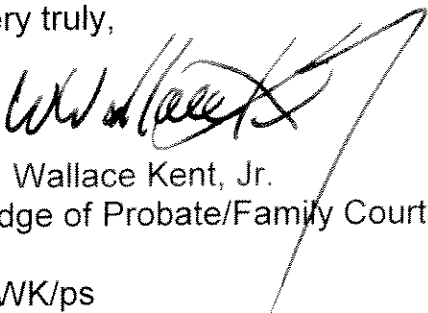
In light of the above issues, the only thing that a judge could do to protect himself/herself from a tenure commission complaint under MCR 8.103(4) is to discipline attorneys for circumstances beyond their control or dismiss cases for failure to appear and prosecute at the scheduled date. Both approaches would be unjust in the extreme, but I can think of no other option available to the trial courts.

Finally, the guidelines should remain exactly that—guidelines. Although the schedules suggested by the guidelines may be appropriate in most cases, there are some exceptions to the norm, and not every case is nor should it be ready for trial at the times suggested by the guidelines. Complex cases, including but not limited to matters involving significant fortunes or damages, of necessity require extensive discovery. Extra witnesses whose input may be necessary are not always available or willing to abide by the fast track guidelines and in fact may have a duty and responsibility to be elsewhere. Not only are the guidelines not necessarily the priority of all the witnesses; in some cases, they should not be the priority of the witnesses.

In light of all of the above, I suggest that the Supreme Court decline to amend MCR 8.103(4) at this time and reconvene an advisory committee instead.

Thank you for your consideration of my comments.

Very truly,



W. Wallace Kent, Jr.  
Judge of Probate/Family Court

WWK/ps

cc: Honorable Milton J. Mack